

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1955.02
 COMPLAINT INVESTIGATOR: Sandie Scudder
 DATE OF COMPLAINT: September 26, 2002
 DATE OF REPORT: October 25, 2002
 REQUEST FOR RECONSIDERATION: no
 DATE OF CLOSURE: December 13, 2002

COMPLAINT ISSUES:

Whether the Eastern Pulaski Community School Corporation and the Logansport Area Joint Special Service Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, by providing instruction to students not eligible for special education and related services in the special education resource room.

511 7-22-2 by failing to provide prior written notice to the parent at a reasonable time before the school proposed to change the student's special education placement.

511 IAC 7-23-1(p) by disclosing or otherwise allowing access to personally identifiable information without the parent's consent when delivering the student's IEP to the parent by leaving it on the seat of a bus.

511 IAC 7-21-8(a)(5) and (7) by terminating the administration of the student's medication without the written and dated consent of the parent.

During the course of the investigation, an additional issue was identified:

511 IAC 7-27-4(c) by failing to utilize the CCC to consider the concerns of the parent for enhancing the education of the student, specifically, by unilaterally determining the student's placement without the parent's participation.

FINDINGS OF FACT:

1. The student (Student) is 17 years old and is eligible for special education and related services as a student with an other health impairment, a mental disability, and a communication disability.
2. Although the Complainant asserts the School is not implementing the IEP, the Complainant could cite no specific instances in which the School failed to provide special education or related services. The resource teacher states that only students with special needs receive direct services from the special education staff in the resource room. Students without disabilities who need to complete make-up tests may do so in the resource room, but do not receive any assistance. The special needs students are included in general education classes, and students without disabilities may participate in drill and practice activities with special needs students.

3. The School contacted the Complainant on August 12 and 14, 2002, via telephone, and provided the Complainant with a Case Conference Notification Letter dated August 16, 2002, to schedule a case conference for August 20, 2002. The notification letter stated the purpose of the meeting was to discuss an appropriate educational program and classroom recommendations. After receiving the notification letter, the Complainant notified the School that she would be unable to attend the CCC meeting, and did not state the CCC could convene without her. The School did not attempt to reschedule the CCC meeting with the Complainant, and the August 20, 2002, IEP does not document any parental concerns. The August 20, 2002, IEP documents that the CCC convened without the Complainant present, and decided to change the Student's placement from attending two days at a school housing a self-contained class to full-time placement.
4. The Principal stated that he attempted to hand deliver a copy of the August 20, 2002, IEP, to the Complainant at the completion of the Complainant's morning bus route on August 23, 2002. After being unsuccessful in personally giving a copy of the IEP to the Complainant, the principal placed the IEP on the bus seat and secured the bus doors. The Principal stated that the Complainant did not express concern to him after finding the IEP on the bus seat, "nor was any breach of confidentiality made of which I am aware." The Complainant states that the school bus is not secure unless closed from the inside or locked with a key on the outside.
5. The Complainant states that the classroom teacher forgot to administer the Student's medication one day, and then chose not to administer the medication to the Student for four more days, without the Complainant's permission, from October 9 through October 13, 2000. In an e-mail from the classroom teacher to the Complainant dated October 18, 2000, the classroom teacher states that: "I've been meaning to write you and let you know that we have NOT been giving [Student] his meds at all for the past 5 days." The letter from the classroom teacher does not list the five days the Student did not receive medication. The School did not submit a copy of the medical log documenting what days the Student did not receive medication.

CONCLUSIONS:

1. Finding of Fact #2 establishes that although the Complainant asserts the School is not implementing the IEP, the Complainant could cite no specific instances in which the school failed to provide special education or related services. Students without disabilities were granted access to the resource room to complete make-up work, and to have drill and practice activities with groups of peers who have special needs; however, these activities did not compromise the implementation of the student's IEP. Therefore, a violation of 511 IAC 7-27-7(a) is not found.
2. Finding of Fact #3 indicates that the Complainant received a Case Conference Notification Letter documenting the purpose of the CCC meeting, and notified the School that she would not be able to attend. The CCC convened without the Complainant, and the Complainant became aware of the Student's change of placement upon receipt of the CCC Report/IEP on August 23, 2002. Therefore, a violation of 511 IAC 7-22-2 is not found.
3. Finding of Fact #3 establishes the CCC chose to change the Student's placement on August 20, 2002, without the parents in attendance, and without considering the concerns of the parent. The School did not attempt to reschedule the August 29, 2002, CCC meeting, or to assess the Complainant's concerns after discovering the Complainant could not attend. 511 IAC 7-27-4(c) is found.

4. Finding of Fact #4 indicates that the principal placed the Student's IEP on the seat of the unlocked school bus. While the School did not affirmatively disclose information, the School left the information in an insecure location where others could have seen it. Access to personally identifiable information regarding the Student was available to the public. Therefore, a violation of 511 IAC 7-23-1(p) is found.
5. Finding of Fact #5 establishes that the classroom teacher did not administer the Student's medication for five days during October 9, 2000. According to 511 IAC 7-30-2(b), the alleged violation regarding the Student not receiving medication is over one year old, and cannot be addressed. Therefore, a violation of 511 IAC 7-21-8(a)(5) and (7) is not found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Eastern Pulaski Community School Corporation and the Logansport Area Joint Special Service Cooperative shall:

1. Write a written memorandum stating that the CCC, when considering a change of placement for the student, will consider the concerns of the parent for enhancing the education of the student. Copies of the written memorandum shall be given to school administrators and all special education personnel. **A copy of the written memorandum, and a list of all personnel who received the written memorandum, shall be submitted to the Division no later than November 7, 2002.**
2. Write a written memorandum that personal identifiable information will not be disclosed to any one other than the parent or eligible student or authorized school officials. This includes leaving information or paperwork exposed and unattended in an insecure location where it can be seen by others. Copies of the assurance statement shall be sent to all school principals, assistant principals, and special education teachers of record. **A copy of the assurance later shall be submitted to the division no later than November 14, 2002, with signatures of the personnel receiving the assurance letter.**